Housing Law Practitioners' Association

Minutes of the Meeting held on 21 September 2016
University of Westminster

Possession Update

Speakers: **Stephen Cottle, Garden Court Chambers**
Gareth Mitchell, Deighton Pierce Glynn

Chair: **Tim Baldwin, Garden Court Chambers**

Chair: Good evening everyone. My name is Tim Baldwin, I am a member of the HLPA Executive Committee and I will be chairing the meeting. Firstly I would like to ask if anyone has any corrections or amendments to the minutes of the last meeting. If not, I will introduce the two excellent speakers we have for tonight's meeting, Stephen Cottle from Garden Court Chambers and Gareth Mitchell from Deighton Pierce Glynn solicitors.

Stephen has been at the bar since 1984 and is described in the Legal 500 as a leading expert in Romany gypsy and traveller rights cases, razor sharp in his observations. He's had a long career – and I hope he doesn't mind me saying a long career – in housing law and he was a finalist for Legal Aid Barrister of the Year 2014. He's going to talk mainly about defences to possession proceedings, that's Public Law defences, Equality Act defences and Article 8 defences. In particular you should all know of Stephen's immense contribution to the development of Article 8 defences through his persistence in taking the case of *McCann v UK* to the European Court of Human Rights.

Turning now to Gareth, I will read what it says on his webpage on Deighton Pierce Glynn's website. It says: "Hugely impressive, really hard working, very bright and very good at spotting the issues". I read his entry and it was incredibly impressive and I understand that the significant case that he will talk about relates to the case of *Jones v Southwark* and that is the overcharging claim in relation to service charges for water.

So without more ado I will introduce you to Stephen, who will speak on repossession matters.

Stephen Cottle: Good evening. I have quite a large handout here but I will try and cut it down to the brief points. On Page 1 of the handout I've set out some background to an Equality Act defence and some words of wisdom in Paragraph 4 about concentrating on the precise wording of the statutory provisions. To find your way around this handout I have listed at the back some of the cases that I will talk about later on and I have also attached the relevant statutory provisions which appear at Page 36.

Disability: You will find some reference to this on Page 4. A couple of points that I would like to highlight. First of all, dealing with a disabled client consider whether there is any amendment to court processes, whether there's any directions that you require from the court, whether you're thinking about video conferences or attending with a judge and the judge's clerk and the other barrister on a person who is in bed in a residential home, and what sort of provision is going to be required during the course of the litigation for your disabled client.

I've also drawn out from Paragraph A14 of the guidance on the definition of disability a point regarding excluded issues. What you often find is that the client is abusing substances or an alcoholic but there are also other underlying issues. Paragraph A14 raises the point that just because there's an exclusion, it is not necessarily the end of the matter. Also a further point - in the July 2016 legal action bulletin article by Douglas Johnson and Catherine Casserley, there is a reference to an observation made by His Honour Judge Serota QC, who pointed out that his diabetes was well under control and that he did not consider himself disabled but, in fact, there is Paragraph 5 of Schedule 1 of the Equality Act that contains supplementary provisions concerning disability, that requires assessment of the medical condition - without the effect of treatment.

What you often find in disability issues is that the landlord is waiting to be persuaded and will back down once you have a proper report, but I do emphasise the word **proper** report, and you'll see from some of the case law that in fact a GP's letter isn't really going to be sufficient to persuade a judge, and if it is an adequate report a judge can simply depart from it.

Reasonable Adjustments: First of all, have regard to the *Archibald* case, required reading, and the basic legislation in reasonable adjustments is to avoid the discrimination arising from disability. So this is an anticipatory duty that certainly public authorities are meant to be thinking about precisely to avoid the circumstances of a claim under s15 where you have disability arising from discrimination. Look for the precise nature of the provision criterion or practice, the PCP, and be really clear what it is that you're complaining about with the PCP. There may a housing benefit arrears case and there is some adjustment that you can recommend. It's no good recommending the adjustment until you've fastened on the PCP first of all, because it's the offending PCP that you need to identify.

Putting a person at substantial disadvantage, you'll be aware from s212 – I have it as 211 at Page 7 in my handout, but it is 212 – means more than minor or trivial. The suggestion I've made is to concentrate on the practical results of the measures which could be taken and so, again, it's not just blandly saying you could make a reasonable adjustment, it's coming up with hard and fast examples of precisely what you mean, what adjustment are you talking about. Somebody's not responding to requests for information on housing benefit renewals, and so you want the request sent to the client also being sent to the support worker. Do you want the request for information also being sent to the housing manager, so somebody can point out to them that the ball is in their court and they have to respond. There are adjustments that can be made in order to assist a person being able to help themselves.

I've also set out Schedule 2 in the body of the paper because it's often overlooked – it is Paragraph 2 of Schedule 2 on Page 6. If a service provider requires (a) to take a step which would fundamentally alter the nature of the service, and there was an example in *Edwards v Flamingo Land* which I've referred to over the page. That case concerned a restaurant met with a request to take a meal out to a disabled person. The Court of Appeal held that that Flamingo Land were providing a restaurant service and there was no policy which required adaptation. The Court also noted that for a takeaway to have to change in order to provide sit down meals or for a restaurant to have to provide a take away service was a different service, to the one provided. The further issue is whether such a change would fundamentally alter the nature of the business. In *Southern Pacific Mortgages v Green* it was decided that the provision of an interest only mortgage is very different, indeed fundamentally different, from providing a repayment mortgage. One questions that in the context of a pre-action protocol which was the subject of agreement between the government and the industry, which includes in the list of matters to consider before commencing a claim, changing the type of mortgage. If that was a possible suggestion in the protocol is it not a possible adjustment? I've given you the quote there in relation to *Latif*, which is that it's simply not good enough to show that there's an

arrangement causing a substantial disadvantage. It provides no basis upon which it could properly be inferred that there's a breach of duty. There must also be evidence of some apparently reasonable adjustment which could be made. You need to concentrate on the PCP and the adjustment to that PCP which would address the disadvantage. I suggest that you have one or two adjustments that you're thinking about rather than just putting all your eggs in one basket.

Indirect discrimination may seem like a vast subject, but it isn't. I refer to the handout. I would draw to your attention the case of *Bailey* which I have referred to on Page 8. The court is entitled to take a broad approach and to find that indirect discrimination is liable to affect a significant number of people on the grounds of disability without statistical proof being available. One of the problems with indirect discrimination is getting dragged down into discussions over what the appropriate pool for a comparator is, but this *Bailey* case is making the point that you may be able to do this without statistical proof. Indeed, in the *Green* case concerning mortgage arrears, it was quite easily accepted, there are government statistics – you can get it from the website of the National Archives - disability statistics – to show that once you're unemployed through illness and disability it's a lot more difficult to get back into work.

So in relation to indirect discrimination, one of the quotes in Paragraph 15 on Page 9 is from Baroness Hale: "One should avoid placing technical obstacles in the way of establishing that indirect discriminations occur". In the *Moore & Coates* case which we argued in the High Court, the Judge was dealing with a case where if you're applying for Green Belt planning permission and you're a traveller then (even if only 1 pitch) you're pulled in by the Secretary of State and scrutinised, whereas if you're applying for residential permission as a housing developer, perhaps of 100 houses, you're not subject to the same scrutiny. There are all sorts of difficult arguments that were being raised in the case, but it was actually a very simple and obvious case of discrimination. The Secretary of State's different clever arguments was a case of trying to put technical obstacles in the way of establishing indirect discrimination. In fact, it would have been direct discrimination but for the fact that traveller is defined irrespective of race or creed and can include new age travellers.

Disability Discrimination under section 15: So in a whistle-stop tour, we will carry on to discrimination arising from disability, again not a difficult issue on causation. A lot of energy and resources will be spent on this question of causation but you either have the evidence or you haven't. As was once said by a Judge at a training day: "Give me good facts and we'll see what we can do". But if you have good facts you will win on the causation question and if you're in difficulties on the causation question then perhaps you do not have a good case at all. It comes back to my example of the disabled person losing their job – perhaps a more tenuous one would be a case of associative discrimination. Imagine if you have a carer who has taken time off from work to look after a disabled child and gets into arrears - and then you have a couple more issues in that example.

One of the points on discrimination arising from disability is at Page 10 – and it's quite an important point. The word "unfavourably" does not require a comparison with a comparator. Most judges begin by asking you who is the comparator and actually, under s15, you don't need a comparator. What you have to show, looking at the words in the statute, is that there is unfavourable treatment arising from the disability.

In relation to the burden, I point out s136 in the paper and the burden that moves under s136, and the quote there from the *Ministry of Justice v O'Brien* on justification. Also see at Paragraph 19 on Page 11, the reference to section 119 of the Equality Act 2010 which fortifies your case on a counterclaim because you can apply for remedies there. I have also included a quote from Lord Neuberger regarding the legal effect of discrimination.

Before moving on to Article 8 defences, I would like to take you to the case law at the back, just to ask you to cast your eye down the cases. The first one is *Heidi Simmonds* on Page 39. On Page 40 there is reference to a Dr Kelsey who had been asked whether the act or behaviour were as a result of a disability and the expert's response was described by Lord Justice Tuckey as "short and sweet". What he said was: "Yes, poor impulse control is a feature of her personality disorder." What was said about that is that there's no mention of a partner's involvement in the conduct alleged, which was highly relevant, and not related to the applicant's disability. Although the solicitor's letter contained an extract from the 1995 Act there was no reference to the exclusion of alcohol or drugs, both of which had featured significantly, so there the judge departed from the medical report. I just bring that to your attention to make sure that the letter of instruction, maybe to a single joint expert, rather than just to your own expert, is properly dealing with the issues that the court has to decide.

North Devon Homes v Brazier decided in 2003 is to be compared with the next case, *Smith v Contour Homes*, decided thirteen years later in 2016. In *Brazier* it was found by the Court of Appeal that B was being evicted because of a disability and there was no evidence that the landlord had formed the opinion that the discrimination was justified, whereas in the next case I have mentioned, *Smith v Contour*, the judge at first instance was dealing with an acutely psychotic tenant (and it's surprising that they are only referring to one incident, usually with an acutely psychotic client you've got a list as long as your arm). There, the objective of the landlord in safeguarding other tenants and controlling the tenant's anti-social behaviour was a sufficiently important objective, so the case on unlawful discrimination wasn't made out. The treatment was a proportionate means of achieving a legitimate aim. What I would like to underline, at the very end of Page 42, is the very relevant finding on proportionality that the Defendant would remain well supported with an outreach service and would not be made street homeless.

One of the issues that you're dealing with in these s15 cases is not so much whether you will be preventing eviction from the premises in issue, because the neighbours losing sleep and the misery that they've been subjected to everybody could understand perhaps. What you're really talking about is whether, if somebody is psychotic and they're not intentionally homeless, they will be rehoused with outreach services and will not be made street homeless. What is the point of the possession claim in the first place if the local authority isn't having regard to the statutory obligations that will arise once they've achieved the outcome they set out to achieve? So really it's a question of trying to knock some heads together actually to try and make some sense. I had a case in Leeds where there was a Closure Order being obtained from the magistrates court and it ended up with the local authority accepting a full housing duty under s192 and a duty to secure alternative accommodation.

Lane v Kensington: The only point that I wish to draw to your attention there, from Page 43, is the last word in the middle of the page – "trespasser" – because the person was a trespasser they didn't have a claim under s35.

Again, in the *Swan* case at Page 43 to 44 (as with the earlier case of Heidi Simmons) there was also inadequate medical evidence.

Before we leave discrimination, just to point out that a Government response to the House of Lords Select Committee on the Equality Act was published in July of this year. What the Government is picking up on is that actually the EHRC needs to produce a new Statutory Guidance on reasonable adjustments. It also has a suggestion about carers and, whether in the light of the Care Act 2014 and the rights of carers, there should be more done in relation to associative discrimination which I've referred to. There's also a suggestion in the response about possible reform of s149.

Article 8 Defences

The big issue is whether or not there is security. Some would say that where there is security, Article 8 doesn't make any difference. If there is security you have the reasonableness jurisdiction, but, of course, I would point out that if there is a structured approach to proportionality you're looking at whether or not they're a less obtrusive means of achieving the objective. It gives the court something to fasten onto: - whether or not there is an alternative equally effective measure that causes less interference with the Article 8 rights at stake.

Compare the outcome in cases of *West* and *Armour.* In *West* the Court of Appeal were of the view that it was totally unarguable for the relative of a second successor to mount a defence to a possession claim, given that they had no rights to remain in the property and it would be usurping the allocation functions of the local authority for the court to deny the housing authority, whereas in *Armour* you had an introductory tenant who, between Notice to Quit and the Trial had no complaints against them and the Judge decided that in those circumstances it was disproportionate to push on with the claim.

So even though in *West* you would have thought that there is no further role for Article 8 in defending non secure tenancies, what *Armour* is showing you is there is a role for Article 8 where there is plainly merit in the point. It's not in the public interest to be evicting people on account of behaviour if the behaviour has ceased and they've made real efforts. You have cases where perhaps judges are a little bit cynical but somebody's been to rehab, they've turned a new leaf, there's been a huge investment of public resources in turning this person's life around, there have been no complaints during the period of the litigation, for 12 or 15 months, why knock them down when they're just about to get back on their feet? There are very real and respectable arguments that can be mounted on behalf of a defendant relying on Article 8, even though it seems to be a bad word at the moment, and following the decision in West, Article 8 is said to be redundant.

I have included various different scenarios between paragraphs 38 and 57 in my paper. I will not run through them all. They are there for you to read. What I would like to highlight in Paragraph 38 on Page 18 is that one of the questions that is involved is not so much the loss of the home, but actually looking forward, what are the consequences of eviction on the family and the private life? The trilogy of cases, *Qazi* and *Kay* and *Docherty* which were set aside by *Pinnock*, all concentrated on loss of the home, but in fact there's another angle to Article 8. I would like to draw out the issue of when Article 8 is engaged in respect of a private and family life and certainly it may come up in reasonableness to continue to occupy questions under Part 7 in terms of the children, whether the private and family life is engaged as well.

On Page 19 I've set out Article 12 of the United Nations Convention and the rights of the child, and what I'm asking at the bottom of Page 19 is whether breach of Article 12 is less serious than breach of Article 3, and - since Baroness Hale has said that non-compliance with Article 3 means that it's not in accordance with the law for the purposes of Article 8(2) - whether non-compliance with Article 12 means that the authority is not acting in accordance with the law. This is a new point and it's how seriously you take the views and opinions of 14-15 year olds who might say well it's not just to do with my school, it's not just to do with my home, it's to do with the extracurricular activities, perhaps boxing club or some other lessons, or looking at the child's development and their involvement within the community. From their point of view what are the options that are available and what are their views in relation to those options and why? So I suggest that Article 12 may be the basis for arguing that a possession claim is not in accordance with the law if no effort has been made to ensure that the child, who is capable of forming his or her own views, has the right to express those views. Indeed, in some of the traveller cases that I'm doing in terms of enquiries and injunctions, we are getting reports and

the local authority have accepted the need to get reports in relation to the children, including their views, before actually getting into court. It's a new area. I don't know what will become of it but certainly it seems that if Article 12 is there, it's there to be used.

Zoumbas I've set out on Page 20. I had a possession claim against a traveller who had been invited onto a pitch by a relative, and the relatives had gone. The district judge made an order. HHJ Raeside at Guildford County Court upheld the appeal and set aside the possession order because the authority had not addressed the best interests of the child and whether or not best interests might be better served in terms of alternative accommodation or being allowed to stay until that was available.

In relation to paragraph 47 - "Any available defence based on the tenant's convention rights" is a quote from s84A of the Housing Act 1985 again coming back to Closure Orders and the question is, what is meant by that phrase: Any available defence that is available to the tenant. Is it just the tenant's convention rights? Or could it include the tenant's family as well or the Article 8 rights of the child? So I'm asking, in paragraph 49, whether it's intended to exclude or whether it should be read down to include the family in a compatible way.

But we will see more and more absolute grounds for possession under s84A as local authorities pick up on how easy it is to get a Closure Order on the back of a conviction or the evidence they take to the magistrates' court, then come back to the county court under s84A for an Absolute Order. So, in fact, what I'm saying about Article 8 defences will come back into play because s84A has put it squarely on the table .So the question of an Article 8 defence is now expressly relevant when dealing with s84A.

Public Law Defences: I was just wondering whether Gareth's clients in the water rates cases would have a public law defence, but their case would be on the debt that it just simply wasn't due. I begin by reference to *Wandsworth LBC v Winder*. Mr Winder was faced with a possession claim in 1983 you may recall and he said the rent was too high because the increase that the council had set, was unlawful. He was quarrelling with a local authority's decision to increase the rent. About eighteen months after they increased the rent he hadn't paid it and he was in arrears, and the argument was that it shouldn't be taking place in the county court, the dispute between the parties about the lawfulness of the increase, should be in the high court. But that's all been swept away now. What we do know is that the high court will say that judicial review is the remedy of last resort and if you have a public law complaint in connection with the repossession of your home then you ought to address that argument to the county court judge rather than seeking an adjournment to go off on a judicial review. That point is made in one of the cases that I have listed in the handout, called *R (Plant)* - Paragraph 70 on Page 31 - where an attempt to judicially review was met by the response: "You can pursue those arguments in the county court can't you?".

The Importance of Policy: The *Barber* case that I refer to in the handout was where the local authority hadn't followed its own policy. You really must get hold of the local authority's policy when you're dealing with the question of the decision making process if you have a second successor in the *West* case, even if you do not have an Article 8 defence for that person. You may find, as indeed in Birmingham was the case, that the authority operated discretion to offer carers of the deceased tenant, or second successor family members, alternative accommodation and it's unreasonable to be pushing ahead with this possession claim before that policy has been applied and your client has been offered somewhere else to move to. It's a simple point, they're just not following their own policy and therefore they're acting *ultra vires*, therefore the court has no jurisdiction, so the argument runs, to make the order in the absence of the council proceeding on the basis of a lawful decision.

Unappealed Disputes over Suitability: Picture this - there's an automatic bid and the client gets offered somewhere they turn down, the client doesn't seek a review, doesn't seek a s204 appeal, and then there's a possession claim. The possession claim is based on the fact that no further duty is owed and the client says: "Well, actually, it's just round the corner from my ex who assaulted me and nearly killed my son and here's the evidence from the police and I was having a terrible time and was in a refuge, or whatever, at the time and to have accepted this place is plainly inappropriate given my fear of violence". Now does the local authority say: "Well you can't raise that in the county court because you should have raised a s204 appeal and because you didn't then we can have a possession order"; or is the local housing authority proceeding on a "Wednesbury unreasonable" basis in deciding that they've discharged their duty? Are those questions open for you to raise or not? I've been raising them - and in York there was a case and another in London where people have not taken up the available procedures under Part 7 and are faced with a subsequent possession claim - whether that's the end of it or you can pilot the client through so that whilst the possession claim is ongoing a fresh part 7 application is made and determined. In *Mahmood v Southwark* there was interim accommodation pending a decision, but I'm talking about cases where a full duty has been accepted. Anyway, that may be an area to develop in this area of law. *Lambourne* is a case where it was held you couldn't do this because your old county court public law defence was only available if it exposes a private law right. Mr Winder, you will remember, was complaining about his notice of increase, and if he was right, then he had no arrears; whereas in *Lambourne*, what was in issue was a failure to comply with a public law duty. I would suggest that post *Birmingham CC v Doherty*, *Lambourne* is no longer good law.

Public Law Defences and the Public Sector Equality Duty: Now on s149 I do want to read to you a point that was made by the House of Lords Select Committee in relation to s149. There is also reference to a technical guidance issued by the EHRC which you should also be aware of. The House of Lords Select Committee said: "We recommend that a new subsection should be added to s149, so that to comply with duties in this section a public authority in the exercise of its function or a person within ss2 in the exercise of its public function shall take all proportionate steps towards the achievement of the matters mentioned in ss1". It's the duty to have regard to the need to eliminate discrimination and promote equality of opportunity, and in those circumstances what the House of Lords Committee is saying is that it's time to beef it up. They are also concerned that public authorities in respect of a particular situation that your client is in, may be taking no steps to promote equality of opportunity and may be taking no steps whatsoever to eliminate discrimination, but they're still held to be complying with the public law equality duty on the facts of the given case. The Committee was identifying an inconsistency and inadequacy in the law in relation to the public sector equality duty which is that councils don't actually need to be doing something, they only need to be having regard to the need to be doing something. There is a qualitative difference about whether you should be taking steps or whether you just have to have regard to the need to take steps.

Public Law Defences and the Best Interests of the Child: I have already raised the Article 3 and the Article 12 point of the UNCRC and I make the further point, which is perhaps a cheap point, but it is easier to persuade a county court judge on a public law defence that the authority is acting unlawfully because they've misdirected themselves by not taking account of Article 12 and trying to find out the views of the child than it is to persuade them on Article 8(2), because they're so frightened of the *West* case and the difficulties that they might face on appeal in deciding to set down for trial an Article 8 case. It might be easier to persuade them on a public law defence in that respect.

Finally I've dealt with some threshold issues, at the very end of the paper, pointing out the leading case on the question, which you should be aware of. The main point about *Aster Communities v*

Akerman-Livingstone and Equality Act defences is that the substantive right to equal treatment protected by the Equality Act, is different from the substantive right which is protected by Article 8. That's the way they justify it. Some may say the two march together and there shouldn't be such a difference, but the Supreme Court managed to identify one and therefore you are left with persuading a judge to set the matter down for trial. I have lifted a quote from Mr Justice King at Paragraph 78 in a case called *Brent v Stokes* where he pointed out that merely pleading matters which ought to be taken into account isn't enough. What you want is a draft defence that actually sets out evidence demonstrating the defence, for example that that prior to enforcement there should have been some welfare enquiries and my client hasn't been approached. There's been no correspondence, no invitation to come along to an interview. In relation to the best interests of the child, an example maybe the Defendant's child is on the protection register and here are the social worker details and my social worker hasn't even been told about this computer generated claim for possession based on my arrears of £75. For setting down for trial you need something in the defence which squarely raises the points that you're intending to rely on.

I've had cases where a district judge set a matter down for half a day as to whether or not he should be making directions for trial. They're so concerned on this threshold issue. It sets up a satellite trial, a mini trial, in relation to whether or not the case should go forward, and really I'm just emphasising the point of being well prepared at the first hearing. It's very difficult if you've just got the client the day before and you do not have the funding to put in place all the evidence collation that you would like to do. One of the points is to ask the authority, before you get to court, if they could disclose any minutes or any system of delegated authority as to who is responsible in order to identify where the buck stops in these issues, because sometimes the people who make the statements in support of the claim aren't actually the decision makers, and to get some background material, because it's far easier if at the end of the day the respondent's role as the housing authority is to assist the court by putting the relevant material before the court. So before you get to the first hearing ask the housing authority for disclosure of the relevant housing file.

What I would ask for is people's examples in relation to disability related cases. There are myriad circumstances which people might have in their practice and I think we'd all like to hear about them so I would invite you to share any cases which you've had which could have been used for a disability defence.

Gareth Mitchell: Good evening. Everyone should have a copy of my slides, which I'm going to talk to. The punchline to this talk is that the issues in this particular case, of *Jones v Southwark*, have much wider applicability and that's really the reason for coming and giving this talk and explaining the arguments as they were run in the *Southwark* case and to explain the consequences of the *Southwark* case.

There are two Water Resale Orders. The first one was effective from 1 April 2001 and the more recent Water Resale Order from 31 March 2006. They are both made under the power in s150 of the Water Industry Act and the only point to make about that provision is that the enabling power is broader than the orders which were actually brought into force. So if you want to understand when the orders apply don't make the mistake of looking at s150, look at the definitions in the Orders which are narrower. The Orders are made by OFWAT. You won't find mention of OFWAT in the primary legislation. Formally it's called the Director General of Water Services. In terms of the 2001 and 2006 Orders, there are no material differences between the two orders. All the 2006 Order did was add some bells and whistles which are quite helpful for purchasers – so end users.

This slide sets out the definition of when the Water Resale Orders apply, so we're looking at Clause 5 of the 2006 Order here, but it's identical in the 2001 Order. If we begin at the bottom with Purchaser, that's the easy part. If you have a water reseller, the person who is buying or paying the water reseller, that is the Purchaser, which is the tenant in *Southwark*.

The Reseller definition is more complicated. In the *Southwark* case a great deal of time and energy was taken up by Southwark in trying to demonstrate that they weren't actually doing anything in terms of supplying piped water or supplying a sewerage service. That's the wrong approach and really the clue is in the first word of the definition – "reseller". It means what it says. It is someone who accepts liability to pay the water undertaker's charges and no more than that. The way you get to that is quite convoluted, because it requires you to look at the overall regulatory scheme in the Water Industry Act, which is complicated, but if you work your way through it what you find is that it is really as you would expect, the provision of water and the provision of sewerage services are very heavily regulated, and, in fact, the only bodies who can provide a supply of piped water and who can provide a sewerage service in the overall regulatory scheme are the water and sewerage undertakers. Now the water and sewerage undertaker we're talking about in London – or certainly most of London and surrounding areas – is Thames Water.

The only exception to that is there's something called a Licenced Water Supplier, but we don't need to worry about that because Licenced Water Suppliers can only become involved in relation to the provision of water to non-dwellings, and this Order just focuses on dwellings. The part of the definition that I put in square brackets under subsection B just makes that point clear. That's why that's there – it's making it clear that when we're talking about what is a Reseller we're not talking about Licenced Water Suppliers.

In terms of what the effect of the Water Resale Orders are, the basic principle - and this is common not just to water but to other utilities as well – is that they are so fundamentally important that they shouldn't be bought and resold on for profit. That's the basic principle given effect in Clause 6 of the 2006 Order – so the Reseller's charge to the Purchaser (the amount that the landlord, in the *Southwark* case is charging the tenant) cannot exceed the amount which the Reseller (Southwark) is liable to pay to Thames Water. With one exception - and that's the third bullet point - that they are allowed to raise an annual administration charge of up to £5.48. The fact that that is a very low charge is also a clue to what a Reseller is, because if a Reseller was doing anything more than simply an administration task then obviously it would want to be paid very much more than that.

Where you have a Reseller who is doing this on a massive scale – and Southwark has tens of thousands of tenants – the Water Undertaker will charge a lump sum amount to Southwark. In order to apply this principle that they cannot, in relation to a particular dwelling, charge more to the tenant than they're paying the Water Undertaker, you have to work out how to apportion the total bill, and there's a formula set out within the Order to explain how you do that.

In fact you don't need to get too bogged down with that because one of the useful things that the 2006 Water Resale Order did was add Clause 9, a new provision, about transparent charging, and that's very useful because as the end user you won't necessarily know what the landlord is liable to pay to the Water Undertaker and how the landlord is choosing to apportion that total charge amongst all the occupiers so it's difficult to work out whether they're making a profit from this. But the transparent charging clause requires, on receipt of a written request from a tenant, the provision of information about how much is being paid to the Water Undertaker and how that's being apportioned, so the end user can work out whether or not the Water Resale Order has been complied with.

Now the whole point of this talk is that it's not just Southwark that's doing it. Lots of other local authorities and social housing landlords are doing this. In all those other areas, if you're helping a tenant you can get them to make that written request – but the response will come back "No, we're not a Water Reseller, so we're not going to tell you the apportionment because this doesn't apply to us. Well it's still worth making the request anyway, because the way Clause 9 works is that you make the request and if the information is not provided within four weeks then your liability to your Reseller is fixed at half the average water bill and sewerage bill for the area in question, and that will always work out in you ending up with a much lower liability. So even if they ignore it, and you have a two year case about this, it's still worth making the request because your liability will be cut significantly in the interim.

The core issue in the *Jones* case was whether or not Southwark was or had in the past been liable under the statutory scheme to pay Thames Water for the water supply and sewerage services to Miss Jones' home. If so, there would be resale - because the way the statutory scheme works is that as soon as you accept a liability under the statutory scheme to pay the Undertaker's charges, you are then the consumer and the customer. So Southwark would be the consumer and the customer, Miss Jones would not be. Instead she would be a water resale end user or, using the language of the Order, a Purchaser.

Southwark's position was: "Well the reason that there's a liability to pay water and sewerage to us in found in Miss Jones' tenancy agreement is simply that we are being asked to act as an agent for our principal, Thames Water, who have appointed us as a billing and collection agent – so the tenants are still liable to Thames Water, it's just that we've come in as an intermediary to help them pull in the charges which are due".

However, Southwark were found to be liable to pay Thames Water under the statutory scheme for two reasons, and they operate entirely separately of one another. The first reason is that in March 2000 Southwark had entered into an agreement with Thames Water which the judge construed as being an agreement to accept liability to pay Thames Water's charges. But even if that hadn't been the case, the second point came into play, which is that between 2002 and 2010 under Thames Water's charging scheme – and I'll explain what that means in a moment – Southwark were liable in any event. So even if there hadn't been this agreement in the particular terms that it was set out in, Southwark had still been reselling between April 2002 and March 2010.

What I will do now is just explain each of those points and how the arguments developed. I will start with the point that Southwark was a Reseller because of the agreement that they entered into with Thames Water in March 2000.

Often it will be the case that you will have several potential people who could be liable for water charges for a dwelling: you may have a tenant; you may have an immediate landlord; you may have an owner; they may have multiple tenants - all sorts of different scenarios. The way that the Act works is that it creates a default position so that it's the "occupier for the time being" who is liable for Thames Water's charges under the statutory scheme. It's not a great default position because nowhere in the Act is the term "occupier for the time being" defined. However that default position may be displaced where Thames Water enters into an agreement under which some other person becomes liable.

Now the agreement between Thames Water and Southwark had a confidentiality clause and I think all of the other agreements that Thames Water has almost inevitably are going to have the same confidentiality clause in them, so they're difficult to get hold of. But what it meant was that

Southwark's tenants had no idea that there was this agreement and the only way to get the agreement was to get an order for disclosure and inspection.

Now in terms of what the agreement actually said, I haven't set it out in slides because the key provisions are all set out in the judgment at paragraphs 8 and 9. What was really important in the way that the case was run was to focus in on the law on the interpretation and construction of contracts. The *Arnold v Britton* case was a Supreme Court case from last year which had really striking facts, so you might remember it, but his was holiday chalets which people had bought and there was a service charge clause, a 99 year lease. In 1973 the service charge was a pittance but the multiplier that they used in creating the annual uplift in service charge had the horrible effect that by the end of the 99 year lease the service charge per chalet was over half a million pounds per year. You would think that the Supreme Court might take pity on those chalet owners but it didn't, and they adopted a very principled approach of saying commercial common sense only comes into play if there is real ambiguity and it only has a limited role to play. What it emphasised was that you look at the wording of the contract and you adopt its natural meaning and you don't look at commercial common sense save in exceptional circumstances, and you also don't look, except in a very narrow way, at all the extrinsic circumstances.

Chartbrook v Permission Homes makes a similar point, and rather than having to plough your way through those judgments, Mr Justice Newey sets out the core principles in his Judgment at paragraphs 39 and 41. He also says this later on in his Judgment: "How the parties have conducted themselves since entering into the 2000 agreement can be of little or no significance" - and he refers to Lord Justice Lewison's book on the interpretation of contracts. The judge also said "but in case it matters it can be observed that the parties' behaviour has not obviously been entirely consistent with an agency relationship". The point there was that in running this case we had boxes and boxes of disclosure from Southwark and very lengthy witness statements all explaining what had in fact happened on the ground after the agreement had been entered into, basically making the point that 'we've all operated on the basis that this is an agency agreement and it is news to us that it might be reselling - we haven't been operating that way at all'. The neat short answer to that is that it's completely irrelevant. It post-dates the agreement. It can't possibly be relevant to how you interpret it. If you've been acting under a mistake and you've misunderstood the agreement you've entered into, tough. - it doesn't have any bearing when looking at whether or not the 2000 agreement made Southwark liable to Thames water under the statutory scheme.

Interestingly, though - and this is one of the reason he says that even with all this extra material they came up with, it wasn't all one way – when this issue was first raised with Southwark, the first action they took was to get in contact with Thames Water's legal advisers saying this is a disaster and its obviously wrong. The response from the Thames Water's legal advisers was that actually we think Miss Jones is right and we think that is what these agreements are supposed to do. But, that cut both ways, so that was also irrelevant, but interesting nonetheless.

Essentially Mr Justice Newey said: "Does this look like an agency agreement? Does this have the clauses which you would expect to see in an agency agreement, or does this look like a sale agreement?" He came up with thirteen reasons why it looks like a sale agreement, not an agency agreement. But the most obvious of them all, and this is the first point here – I've not set out all thirteen – was that the agreement basically said at the beginning: "We agree to be liable for the charges for the services." In particular – there was nothing in the agreement saying that there was any expectation as to what Southwark would do once it had paid the Thames Water bill, which it received annually from Thames Water. There was no expectation that it actually went about collecting the charge or did it in any particular way. This is an area that is very heavily regulated, so the way that

Thames Water operates, the way it behaves towards its customers, particularly its domestic customers, is watched carefully. It has a licence agreement which requires it to do take particular actions and there are other various regulatory obligations, yet it showed no interest in ensuring that any of those things were complied with by its supposed billing and collection agent Southwark.

The only other two points to flag up about the 2000 agreement was that there are two cases which people will be aware of where water charges in a general way have been considered by the courts - both Court of Appeal cases.

The *Lambeth v Thomas* case people will remember because it's been bubbling around for a very long time. It's quite important to remember, first of all, that Mr Thomas in that case was a litigant in person in the Court of Appeal; secondly that it wasn't his appeal; thirdly it wasn't an appeal about any of this, it was an appeal by Lambeth who were simply trying to appeal the judge's exercise of his discretion about whether or not to make a possession order, having found that there were about £800 worth of arrears. However, the Court of Appeal went off at a bit of a tangent because Mr Thomas wasn't stupid and he had at first instance raised a point about whether or not Lambeth was acting *ultra vires* in doing what it was doing, and so they dipped into the statutory scheme and said, "well no, there is a power for local authorities to act on behalf of water companies, or water undertakers". So there was a *vires* point. But what the judgment doesn't do, and this is important for people who litigate against Lambeth, is set out in any detail at all how the first instance judge came to the conclusion that this is what Lambeth were doing that, rather than reselling, at that particular point.

In terms of *Rochdale v Dixon* - again you might remember that case from a couple of years ago. That was actually a case which was helpful as Miss Jones and Mr Dixon very kindly gave us the agreement between Rochdale and United Utilities, because it was an exemplary agency agreement. It had all the points you would expect to see in an agency agreement. It said all the things that you would expect to see, all of which were absent from the very different agreement between Southwark and Thames Water.

So that's the 2000 agreement point, and I'll explain why that point has much broader relevance shortly, but just to deal with the Charges Scheme point, the way the statutory scheme works is that you find in s142(1) Thames Water's power to fix demand and recover charges for their services. Then you find in s142(2) a requirement that it exercises that power either in accordance with the charges scheme or in accordance with agreements with the persons to be charged.

So each Undertaker produces a Charges Scheme annually. You'll find, for example, Thames Water's current Charges Scheme on its website. You don't, I think, find all the previous years' schemes, but I emailed and asked for them and they just sent them straight back to me, so they're not difficult to obtain. They're quite lengthy documents, generally in keeping with the fact that this is quite a heavily regulated area, but if you word search through the document down to "person chargeable" what you find is that all the schemes from 2002 to 2010 included this clause: "Where the relevant premises to which the supply is made is let on a tenancy of less than 12 months the owner is regarded as the occupier and is liable". Now Southwark's position in this case was that that part of the Charges Scheme was unenforceable because you couldn't use a Charges Scheme to impose liability on an owner in that way, and it boils down to an issue of statutory construction. Those are the judge's reasons and given the time I'm not going to try and explain that as it would take ten minutes or so to have a look at s142, 143 and 144.

So that's the outcome. Southwark is not appealing. One reason why is that in the very early stages of the case we made a Part 36 offer, knowing that we might win for the period up to July 2013 but we

might lose for the period thereafter, and that a win for the period up to July 2013 was more than enough for our client. Southwark's calculation will have been that they could have ignored our Part 36 offer and appealed, but I think their calculation was that they weren't confident about appealing this successfully, and if they didn't accept our Part 36 offer they would have had to have dealt with this other issue.

Now the other issue. Basically what happened was that when Southwark got worried about this they entered into a new agreement with Thames Water which looked much more like a billing and collection agreement – an agency agreement. But the issue there was that they entered into that agreement entirely behind closed doors. No one knew about it, and Miss Jones' second point was that this Deed, the 2013 agreement, was invalid because Southwark had failed to follow its key decisions procedure.

If you know something about local government constitutions, you will know that mostly they are giving effect to provisions in primary legislation about the way they go about decision making and one of the aspects of that is the key decision procedure. So, if they decide on something big, they have to publicise it, consult it, they have to get their scrutiny committee involved. It's quite onerous. Southwark accepted that they'd completely ignored that and they were in breach of their constitution in doing this, and in breach of the primary legislation on which their constitution is based. But their position was: "Well that doesn't invalidate the Deed", and that's quite a complicated point which remains unresolved, because although Miss Jones didn't pursue it, that doesn't prevent anyone else from pursuing it. In answer to Stephen's question about whether or not the Winder case has any application to that – well it does, in the sense that, if you are in Southwark, the best way to raise this particular issue now is in defence of a possession claim, you raise this as a public law defence, and the reason you'd want to do that is that you have problems if you do a JR about this now in terms of delay.

This has had a considerable impact in Southwark, but the point is what potential impact could this have in other areas? So, there was a 22.1% differential between the amount that Southwark was liable to pay Thames Water and the amount it was charging its tenants, so it was making a profit. Annually, by the time this came to trial, they were making about £2.5 million out of this. So they had to pay that back. The tenants were also entitled to interest on this and it's quite a good rate of interest because it's provided for in the Order, minus the £5.48 they're actually allowed to charge by way of an administration charge each year. What Southwark did first of all was announce that, thinking of limitation, we'll just pay back to April 2011 but in fact, two months later, what they did was announce that they will pay everything back from the beginning up to the July 2013 date and I think they've now paid back all of it. They say they have, and that's £28.6 million to 31,000 current tenants and 43,000 former tenants.

Why the change of heart? This is quite important. There are two points. First of all, the Limitation Act doesn't apply to defences, so, as Stephen said, the way this argument is run if you're running it in a possession case is you just say the money's not owed, and that's a defence. You don't need to have a set off and you don't need to do a counter claim - and as soon as you do a set off or a counter claim then you potentially have difficulties with limitation, but if you're only raising this as a defence in possession proceedings it just doesn't arise.

But the other point is that s32 of the Limitation Act misapplies limitation in certain circumstances: fraud; when any relevant factor is deliberately concealed from them by the opponents; or mistake. The basic point here is that none of the tenants in Southwark had any idea that this was going on. They didn't know about the 2000 agreement and, in fact, they not only didn't know about it, they were misled about what was going on because every year Southwark would write to them in an annual rent

increase letter and say: “We are collecting the water charges here on behalf of Thames Water” - and they weren’t doing that at the time they were doing it with any of this in mind, they were doing it, I think, going back to the *Lambeth v Thomas* case - they were concerned about *vires* and making sure that they were making it clear what it was they were doing. Anyway, they did that every year. They misled everybody. They said: “We’re an agent” – but they weren’t an agent, they were a reseller. So you have a way of getting round any limitation problems, and so that’s why Southwark agreed to pay everything back.

This is here because I find it quite funny – on 25 April they write to District Judge Zimmels at Lambeth – and thank you Southwark Law Centre for giving me this letter – saying: “We’re confident the amount due to any tenant will not exceed £618”. Two months later they’re less confident and those are the maximum amounts which they then accept they have overcharged people and those figures are the maximum amounts, and how much you pay depends on the rateable value of your property so those will be the outliers. The more normal amounts will be £700/£800/£900.

But obvious there’s an issue here. Credit to Southwark, they’ve paid back the money, but obviously people have lost their homes in the past because of these unlawful charges and Southwark knew, certainly since 2009, that this was an issue and carried on with their possession claims regardless.

Then what’s happened in Southwark. The point really here is to go back to the beginning of all of this and emphasise why it’s not ideal that local authorities get involved at all in water and sewerage charges. Southwark, again to their credit, have now consulted on terminating the agreement – and I think they’re pretty clear that they’re going to go ahead with it, although they’ve not made a final decision yet. If so, all the tenants in Southwark will have their tenancy agreements varied so they’ll no longer be liable to Southwark for water and sewerage charges. Instead the tenants in Southwark will be in the same position as any other owner/occupier – you get a bill from Thames Water every year and you pay it.

That’s good news for the tenants because under the current arrangement they’re liable under their tenancy agreements and they don’t pay, there could be possession proceedings. But if you are a direct customer of Thames Water there’s not much Thames Water can do. They can no longer cut off domestic customers and they can go and get a county court judgment – so it’s a less serious remedy for arrears. Also, if there’s resale, you can’t choose any of the different charging options that are open to normal customers, because you’re not the customer. If it’s agency, which is arguably the current situation in Southwark, that’s still not ideal, because you don’t get told about any of these alternative charges. Whereas if you’re a direct customer you will know, or you will certainly know after tonight, that you have some choices.

The default position is that you end up with the unmetered charge based on your rateable value, but you might want to save some money and be environmentally friendly and pick the metered charge. You make a written request for a meter and are charged according to usage. In fact you can do that on a trial period to see if it’s cheaper, and switch back to rateable value charging if it isn’t. You can also pick the assessed household charge, which is really attractive, because if you work it out as a weekly figure it’s quite low. A lot lower than what secure tenants are typically charged. There’s a single occupier rate, a one bed rate and a five bed rate. The assessed household charge you can only get if you request a meter and it’s too difficult to install it, and in most tower blocks, for example, it’s too difficult to install it because there are multiple entry points where the water comes in and the sewage comes out, and you need a single entry point for a meter. So if you’re in a tower block and you request metered charging you end up with an assessed household charge which is good news

because it's quite cheap. But if you do end up on the metered charge then there's also the Watersure tariff which is very good if you have a big family and if you're on means tested benefit.

Wider implications: Now this is the punchline in that Jill Jones, the witness from Thames Water who came to court, explained that they had what she called commercial agency agreements in place for 69 local authorities and housing associations. These arrangements, she said, covered some 375,000 properties. The basic point is that the agreement that we saw between Southwark and Thames, the core clauses of which are set out in the Judgment, is a pro-forma agreement. We did see a copy of the agreement between Thames Water and Tower Hamlets, and again that's got a confidentiality clause, but it was before the court so I can tell you about it. I can't tell you what whether or not it's a 22.1% difference as it is in Southwark, because I think the rates probably differ – they all negotiated different rates – but otherwise it's identical. It's a pro-forma agreement. So I can't say this with absolute certainty, but I'm pretty confident that those 69 other local authorities and housing associations have identical agreement. So the argument that was run in the *Jones* case can be run in all the other cases. The other point to say about this is that we know from our case that whilst Southwark attempted to get round this in 2013 by entering into a new agreement, none of the other local authorities and social housing landlords have done that, so they're all – or certainly at the beginning of this year they were – continuing to overcharge. But even if I'm wrong about that and it isn't a pro-forma agreement and they all have the different agreements, there is still the Charges Scheme point so they will still have overcharged and acted in breach of the Water Resale Order between 2002 and 2010.

In terms of working out which 69 local authorities and housing associations these are, I think the simple answer is this: If you are liable under a tenancy agreement to pay your water or sewerage charges to your social landlord rather than to Thames Water then this applies to you. Obviously I know about Southwark and I know what the authorities around Southwark do, and they all do this. But, because there are more than 69 local authorities and housing associations in the Thames Water region, there will be some that don't do this and their tenants are simply direct customers of Thames Water, but there will be many that do.

So this is a Thames Water region focused talk up until now, and Thames Water region is based on the water basin so it's much larger than London. But does this have any application beyond the Thames Water area? Well, potentially, for two reasons. First of all, whilst United Utilities – we know from the Rochdale case – don't fall foul of this because they have a nicely worded agency agreement, query what's happening in other water and sewerage undertaker areas. So you need to get disclosure of those agreements. Also the Charges Scheme point undoubtedly applies outside the Thames Water area. In preparing for our case, we looked at lots of other Charges Schemes for lots of other water and sewerage undertakers across England and lot of them have a similar clause.

The last point is about funding. There were particular reasons why you'll see that the case was brought to the Chancery Division as a Part 7 claim: we have a Chancery judge who is not fazed by making a judgment that will have massive financial consequences because they do that all the time compared to Admin Court judges, but also there are many procedural advances that you don't get in a Judicial Review in terms of disclosure and the ability to cross examine witnesses. But the problem now is that we applied for funding for this case a week before LAPSO and now you can't get funding to do a case like this, so the way you would have to do it would be under exceptional case funding, which is obviously not attractive. You could do it as a JR, but you have all those procedural disadvantages. You could do it as a defended possession claim, but I say "on the back foot" because the claim's up and running and you haven't got your evidence together. Also I think that if you run this point in any of

those other 69 areas in London they'll just settle them over and over again to avoid the point going to trial.

Then the other way of raising this point is to flag up a Local Government Ombudsman decision from Hammersmith and Fulham in 2014 where there was about £38,000 paid back, so it was not for the whole of Hammersmith and Fulham, it was a particular block where somebody had made a complaint about something completely different but the Ombudsman was alive to this and picked up the point and they all got refunds.

Chair: I would now like to invite questions to both speakers.

Contributor: This is for Gareth. In the first case I've had since I read about your case I've raised the point that an applicant had served a warrant which is being heard on Friday, and it's going to Greenwich. I just want to make sure that I understood what you said in slide no 5, which deals with the periods for which damages were agreed to be paid, and your first point, as it were, is for the period between 6 March 2000 and 22 July 2013. The cut-off date of 2013 was, I think you said, because Southwark entered into a Deed of Variation which looks more like an agency agreement than an agreement which comes under the legislation. Is that right?

Gareth Mitchell: Yes, that's exactly right.

Contributor: So if my local authority, Greenwich, entered into such an agreement, and if they've entered into a pro forma in the same terms as the Southwark agreement then we should have grounds for a case.

Gareth Mitchell: Yes.

Contributor: Again in terms of practical approach, what I've done in my application is asked for an Order for disclosure of the relevant documents. I can't think of another way of dealing with it, but if you can please suggest other ways.

Gareth Mitchell: No, you will need a Disclosure Order. The way the confidentiality clause is worded is that the only way that you can get it is by Order of the court, so you just need the Order. You obviously want to get them to agree they're not going to oppose the application for disclosure. If they oppose it they'll end up paying costs.

Ian Greenidge, Mary Ward Legal Centre: It's another question for Gareth. I saw on the BBC local news a couple of weeks ago a Southwark councillor who was asserting that nobody had been evicted in Southwark as a result of this water rates scandal because they never evicted anybody unless they had arrears of several thousand pounds

Gareth Mitchell: Four thousand pounds, he said.

Ian Greenidge, Mary Ward Legal Centre: Is there anyone looking at the position of those tenants who say they've been evicted directly as a result of water rates being included in rent?

Gareth Mitchell: Yes, but the difficulty is working out who they are. One of the reasons for cooperating with BBC London doing that piece was to try and get people to be aware of this and to come forward. There are many issues that arise from this case and there's only one of me and it's there on the agenda to try and do something about that, first of all to get them to identify who the people are. Of course they'll be able to know. I think they said initially that they just don't keep the records, but of course their legal department at the very least will have the records. They will keep track of all their aged debt. Undoubtedly they will know. Of course they'll want to know it for

homelessness applications, intentional homelessness. They will have that information without doubt, so it's about trying to get some pressure on them to disclose it.

Connor Johnston, Garden Court Chambers: A question for Stephen. In your paper you suggested that in Article 8 cases we should be urging judges to enquire whether there are less intrusive measures by which they could achieve their aim. The practical problem I have with that is there are very unhelpful comments both in *Powell*, *Hall* and *Frisby* by Lord Hope and in *Ackerman Livingstone* by Lady Hale saying that the structured approach to proportionality isn't really appropriate in possession claims, so I was just wondering if you had any practical tips on how to get round those awkward comments.

Stephen Cottle: There is perhaps some use of shorthand going on, because the first two steps are a given, that does not mean that proportionality has a different meaning. I think there are distinctions to be made. If you have a second successor with no private law rights, as opposed to the *Armour* situation where they're an introductory tenant and if the possession order isn't made they become a secured tenant, there's a qualitative difference, it seems to me, in context. I would argue that it's a given that the local authority will exercise its allocation functions, but if you can try and distinguish yourself from the situation where you would be usurping the authority's allocation functions, then I think you have a basis for an Article 8 defence. I would also argue that, in fact, our understanding of proportionality has that extra tier that was added in 2015 in the *Bank Mellat* case, where an Iranian bank had its assets frozen and they dealt with many other Iranian banks without taking that measure. The Supreme Court thought it was disproportionate because they had dealt with other banks differently, so I think it's a question of the individual facts of the case and having a firm example of what a less intrusive measure would be.

David Foster, Foster & Foster Solicitors: A question for Gareth. Can I just draw down a little more on the way to approach defending possession proceedings with rent arrears. We, for instance, had a case involving Haringey where there are substantial arrears of over £10,000 going back to at least 2000. Are you looking to say that the water charges element of the rent arrears is not owed, to some extent, and you're looking to establish that a proportion of it is not recoverable?

Gareth Mitchell: That's right. How many bedrooms does the property have?

David Foster: Three.

Gareth Mitchell: For a three bedroom house, on the assumption it's similar to Southwark, you would knock around £1000-£1200 off the arrears.

Chair: If there are no more questions, I would like to invite you to thank the speakers for their excellent presentations and move on to the information exchange.

David Foster, Foster & Foster Solicitors: Can I ask whether there have been any developments on what may be included in the next housing contract and are there any reports back generally on relations with the Legal Aid Agency?

Sara Stephens, Anthony Gold Solicitors and HLPA Executive: We've not had any further meetings with the Legal Aid Agency about the future of the contracts, they keep promising this but they haven't scheduled the next round of meetings. I understand they'll be having meetings with various representative bodies about various different contracts to align them all from 2018 but they haven't given any further detail yet, but we will keep you posted.

William Ford, Osborne Solicitors: I would be interested to know whether anyone has any cases involving Hillingdon Council at the moment in relation to refugees who aren't being allowed onto their allocation scheme due to a ten year residency criteria. I'm currently running a JR on it and the council are carrying out their consultation on changes to their allocations scheme as it currently stands. If anyone has any clients that might have similar issues who are getting letters telling them that they're not permitted onto the scheme, for any reason really, but often the ten year residency rule, I would obviously be interested to see if there's any other cases that we can use as evidence of these decisions going against clients. Feel free to contact me.

Chair: If there are no other contributions, I would like to remind you that the Housing Law Conference will take place on 13 December and a 10% discount in the fees is currently available for members. The next meeting will take place on 16 November on the topic of Housing Law Update.